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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 Marcus D. BRICENO,

11 Plaintiff,

12 v.

13 Blake WILLIAMS, et al.,

14 Defendants.
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Case No.: 16-cv-1665-JAH-AGS

ORDER:

**(1) DENYING MOTION TO AMEND
(ECF No. 19) WITHOUT**

PREJUDICE,

**(2) DENYING MOTION FOR COURT
ORDER AND APPOINTMENT OF
COUNSEL (ECF No. 21) WITHOUT
PREJUDICE, and**

**(3) SETTING BRIEFING SCHEDULE
ON DEFENDANTS' MOTION TO
DISMISS**


19 Defendants move to dismiss plaintiff's June 2016 complaint as untimely. Plaintiff
20 Marcus Briceno must respond to defendants' motion by June 28, 2018. Defendants may
21 reply by July 12, 2018. The Court will not hold oral arguments on the issue, so the June 13,
22 2018 hearing date is vacated.

23 Briceno also requests that this Court order defendants to provide him certain
24 discovery and appoint him counsel. As to the discovery, that request is denied. After the
25 motion to dismiss is decided and discovery begins, Briceno will be able to seek the
26 evidence he wishes. As to his request that the Court appoint him counsel, that too is denied,
27 but without prejudice to being raised again in the future. Briceno claims that he is unable
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1 to litigate his case due to medical issues, but fails to provide any evidence or declaration
2 explaining the type or severity of his medical ailments.

3 Finally, Briceno requests an opportunity to amend his complaint. This request is also
4 denied. Briceno has not explained why the Court should permit him to amend; he simply
5 states what his proposed amendments will be. *See* Fed. R. Civ. P. 15. Critically, Briceno
6 does not explain why he waited nearly two years to request this relief. *See Foman v. Davis*,
7 371 U.S. 178, 182 (1962) (listing “undue delay” as a basis to reject a request to amend).
8 Nevertheless, if his complaint is deemed timely, Briceno may seek these amendments
9 again.

10 Dated: May 9, 2018

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13 Hon. Andrew G. Schopler
14 United States Magistrate Judge
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